IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15646 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

KACHHOLI MUSALMAN MASJID'S TRUSTEE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15646 of 2003

MR AJ PATEL Advocate for Petitioner No. 1-10
MS MANISHA LAVKUMAR AGP for Respondent No. 1-2
MR BB NAIK Advocate for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 05/03/2004

C.A.V. JUDGEMENT

(Per: HON'BLE MR.JUSTICE D.H.WAGHELA for the Court)

1. This petition is the second attempt at challenging, inter alia, the notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act'), which are at Annexures-G and J to the petition. By virtue of a statement made by the learned Assistant Government Pleader, on instructions of Deputy Collector Mr.B.N.Chaudhary, who was present in the Court, part of the land under acquisition, namely, the lands comprised in Block Nos.248 and 260, is to be withdrawn from acquisition under Section 48 (2) of the Act and, accordingly, the main grievance of the petitioner admittedly does not survive.

2. It was recorded in the order dated 10.7.2002 while disposing the earlier Special Civil Application No.3197 of 2002 that the petitioners would, in view of certain observations in the report under Section 5-A, move the Government for withdrawal from acquisition of some of the lands and, therefore, permission to withdraw the petition was sought and granted. Thus, the petitioners were permitted to make a representation seeking withdrawal from acquisition of some of the lands in question and such representation was required to be considered expeditiously and in accordance with law. Pursuant to that, the petitioners made a representation dated 23rd July, 2002 and it appears to have been considered and disposed by order dated 16.10.2003. That decision dated 16.10.2003 at Annexure-N to the petition is also called into question by the petitioners in the present petition and the prayer to set aside that decision was pressed.

3. With reference to the aforesaid remaining part of the prayers, the learned counsel for the petitioners submitted that the original proposal for acquisition of the lands in question was rejected by the State Government on three different occasions and yet a notification under section 4 of the Act was issued on 18.7.2000 for acquisition of the same lands. That, the petitioners had submitted their objections under section 5-A of the Act and such objections were accepted resulting into a decision to drop the acquisition proceedings which decision was conveyed to the Collector concerned vide letter dated 13.9.2001 (which is at Annexure-I to the petition). On that basis, it was submitted that the subsequent notification dated 21.11.2001 under Section 6 of the Act in respect of the

same lands was illegal and that the challenge to such notification and the acquisition being effected thereunder was withdrawn in the earlier petition, but it was not unconditional insofar as the withdrawal was with a view to make a representation to the authority. Now that the representation was not decided in their favour, the petitioners were entitled to reagitate the contentions regarding legality of the acquisition, according to the submission. He relied upon the judgments in JUGAL KISHORE BHAGAR v. THE STATE OF BIHAR [AIR 1965 Patna 397], RAM CHARAN LAL v. THE STATE OF UTTAR PRADESH [AIR 1952 Allahabad 752] and YUSUF ALI BEPARI v. THE STATE OF ASSAM [AIR 1958 Assam 154] in support of the submission that once it was decided to drop the proposal after accepting the objections raised under section 5-A, acquisition of land could not be allowed to proceed further on the basis of the same notification.

4. Learned counsel Mr.B.B.Naik, appearing for the respondent No.3 Trust, for whom the lands in question have been acquired, submitted that not only the notification under section 6 was published as early as in November 2001 but the limitation for raising objections has since long expired and the objections raised after such expiry could not have been entertained. He submitted that the proposal for acquisition of the lands in question was considered as early as in 1992 and that proposal did not find favour at three different stages; but, it was incorrect to submit that there were three different proposals which were rejected on three different occasions. Mr.Naik also relied upon the following observations of the Supreme Court in MUNICIPAL COUNCIL, AHMEDNAGAR v. SHAH HYDER BEIG AND OTHERS [(2000) 2 SCC 48]:

> "17.....In any event, after the award is passed, no writ petition can be filed challenging the acquisition notice or any proceeding thereunder. This has been the consistent view taken by this Court.....".

It was also pointed out that the awards in respect of the lands in question were made on 2.11.2003 and individual notices under the provisions of Section 12 (2) of the Act were also served.

5. The learned A.G.P. appearing for the respondent No.1 submitted that, as stated in the affidavit of Mr.B.N.Chaudhary, Deputy Collector, Navsari, after careful scrutiny and reports of the Collector, Navsari, a

decision was taken to proceed and continue with the acquisition proceedings pursuant to which notification under section 6 was issued. It was also submitted that the awards in the matter have been declared on 3.11.2003 and the proceedings for taking over possession were started on 12.11.2003. It was submitted that the impugned decision dated 16.10.2003 deals with the contentions raised in the representation of the petitioner and no valid ground was made out to interfere with that decision.

6. It is clear that the petitioners had expressly withdrawn the earlier petition being Special Civil Application No.3197 of 2002 in which the aforesaid notifications under Sections 4 and 6 were challenged and they have chosen to make a representation. Therefore, it is not open for the petitioners to re-agitate the grounds of challenge or press into service any new grounds which were available at the time of withdrawing the earlier petition. As for the representation dated 23.7.2002, it does not even mention the alleged decision of the Government supposed to have been conveyed to the Collector by letter dated 13.9.2001. Instead, the representation congratulates and expresses gratitude to the addressees and requests to consider the factum of existence of trees on the lands and, on that ground, drop the acquisition proceedings. The impugned decision dated 16.10.2003 has dealt with in detail the contentions raised in the representation and also recorded the finding that the contention of the acquisition having thrice been dropped was incorrect. The main contention of there being valuable trees on the lands is considered by the Government and no grievance is made by the petitioner with respect to that part of the decision. In fact, although the earlier petition was withdrawn after being argued and a desire to move the Government for withdrawal from acquisition of some of the lands was expressed and recorded, the aforesaid representation appears to have been made by only one of the petitioners for cancelling the whole of the notification under Section 6 of the Act. Thus, the scope of moving the Government clearly appears to have been unduly expanded and the process of acquisition already completed is sought to be reversed without any substantial ground being made out. Having withdrawn the petition with a view to move the Government for withdrawal from acquisition of some lands, it is now not open for the petitioners to re-agitate the challenge against the validity of the notifiactions under Sections 4 and 6 of the Act after having unequivocally given up the challenge by such withdrawal of that petition.

7. In view of the above facts and circumstances, the decision of the Supreme Court in MUNICIPAL COUNCIL (supra) and there being no substance in the petition, it is summarily rejected. Notice is discharged with no order as to costs.

Sd/-

(R.K.Abichandani, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)